

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS EUGENE ALCARAZ,

Defendant and Appellant.

H031733

(Santa Clara County

Super. Ct. No. CC584587)

**ORDER MODIFYING OPINION  
AND DENYING REHEARING**

**CHANGE IN JUDGMENT**

THE COURT:

It is ordered that the opinion filed herein on January 14, 2010, be modified as follows:

1. On page 38, under the heading “VII. DISPOSITION” the paragraph, beginning with “The judgment” is deleted and the following paragraph is inserted in its place:

The judgment is reversed with directions as follows: If the District Attorney does not elect to retry the murder charge and enhancement allegations to that charge within 60 days after the filing of the remittitur in the trial court pursuant to section 1382, subdivision 2—unless time is waived by defendant—the trial court shall proceed as if the remittitur constituted a modification of the judgment to reflect convictions for (1) voluntary manslaughter (§ 192) with enhancements for personally and intentionally discharging a firearm and proximately causing death (§ 12022.53, subd. (c)) and personally using a firearm (§ 12022.5, subd. (a)), (2) being a misdemeanor in possession of a firearm

(§ 12021, subd. (c)(1)), and (3) reckless driving (Veh. Code, § 2800.2, subd. (a)). The court shall resentence defendant accordingly. (E.g., *People v. Edwards* (1985) 39 Cal.3d 107, 118 [similar disposition]; *People v. Woods* (1992) 8 Cal.App.4th 1570, 1596 [same]; *People v. Garcia* (1972) 27 Cal.App.3d 639, 648 [same].)

Respondent's petition for rehearing is denied.

This modification changes the judgment.

Dated:

---

RUSHING, P.J.

WE CONCUR:

---

PREMO, J.

---

ELIA, J.